**Resolved:** In the United States, juveniles charged with violent felonies ought be treated as adults in the criminal justice system.

Ought is desirability, so the feasibility of treating juveniles as adults is irrelevant. Further, Affirming would just amend descriptive violations of laws or the Constitution to make the Aff world consistent with them. Accept Aff definitions and interps A. to offset Neg timeskew. Shifting the AC evaluation forces a 13 to 7 restart in the 1AR, when Affs already lose more, and B., because Neg can adapt and link their arguments into Aff definitions.

Charged is defined as “to accuse or blame,” so Aff does not have to defend equal punishment. Not all people charged with crimes eventually serve time, and the framers specifically used “charged” instead of “tried and punished” from 06 to avoid this debate. There is a clear legal distinction between the trial discussion of charged and the punishment one of convicted.

Dictionary.com writes:

Dictionary.com, The Hot Word—5 November 2010. [Blog published by dictionary.com, not random people. Updated daily with interesting information about the meaning of various words and phrases]. What’s the exact difference between being “charged,” “convicted,” and “sentenced” for a crime?

Today, former Oakland, California, transit police officer Johannes Mehserle received the minimum possible sentence in the controversial death of a teenager on January 1, 2009. The incident and subsequent trial have prompted outrage and violent protests. Today’s decision brings attention to the legal meanings of three verbs : “charge,” “convict,” and “sentence.” They appear in the news constantly, but do you know what each term actually describes? Let’s begin with “charge.” When a person is charged with a crime, a formal allegation (a statement not yet proven) of an offense is made. Once convicted, the person has been proven or declared guilty of the offense. In the United States, a person is convicted after a legal trial. After a conviction in criminal (as opposed to civil) proceedings, sentencing is next. When sentenced, the convicted criminal is issued a formal judgment that usually pronounces the punishment. The convict can appeal the sentence, but a sentence usually takes effect while appeals occur.

Even if Aff does defend punishment, “treated as” does not mean “treated with.” Normal means allows for separate facilities for juveniles, so arguments about placing juveniles with adults are irrelevant. Additionally, even if “treated as” means exactly the same, separate facilities treats juveniles and adults exactly the same by grouping each with its own age and holding them to the same standards, grouping likes with likes.

Also, Neg must demonstrate a relevant difference between juveniles and adults that justifies distinct treatment. Neg may not just argue that adult punishments are harmful as the logical conclusion is that neither adults nor juveniles should be treated by that system and therefore should be treated the same. This also includes arguments why a juvenile system is good without articulating why adults would be harmed.

The Value is Justice.

The Criterion is Attempting to Provide Procedural Checks.

First, the legitimacy of laws is derived from the consent of the governed and the mutual constraint formed by agreements between people and the government. Absent procedural checks restraining government abuse, law loses the basis upon which it is formed and the intention and weight of the law are lost. This is not the is-ought fallacy—these agreements between parties constitute the strongest moral weight because there is no objective good outside this constraint, which is why euthanasia differs from murder. Thus governments ought not take actions that allow for violations of the relation between it and citizens, so procedural checks are a prerequisite to other moral determinations.

Second, procedural checks are a prerequisite to other moral formulations because they ensure people’s voices are heard and can participate in forming other rules. If government can exclude people procedurally, the determinations it reaches are not true goods. Even if certain impacts like life seem “good” in a vacuum, the consent and willingness of others to pursue that “good” determines its true normative weight. Impacts do not occur in vacuums, and providing procedural checks to prevent exclusion are the only way to make accurate determinations.

But, under this framework, not all procedural impacts are the same. Government attempts to provide rights come before failures to uphold those or actions of individual agents in the evaluation because we are only responsible for actions we intend to cause rather than ones we allow to occur. Intervening actors or circumstances could have prevented the harms we omit from stopping, meaning the blood is not on our hands. Further, we cannot know with certainty what other agents will do, whereas we have absolute control over our intentions. Even if we can weigh those probabilities, their system always creates a gamble with summing, whereas mine ensures consistent application. While governments may create permissions and prohibitions when regulating third parties, it only regulates itself when choosing to pass a policy about state-provided rights, so this example is disanalogous. Additionally, attempts to provide rights are contextualized as more important in 1 and 2.

Thus, I advocate treating juveniles charged with violent felonies as adults in the criminal justice system with respect to due process rights.

I contend the age-based distinction system lacks procedural checks.

A. The state places too much power with the judge to rule over juvenile defendants. Empirical studies confirm judge bias against these offenders.

Ainsworth writes:

Princeton UniversityThe Court's Effectiveness in Protecting the Rights of Juveniles in Delinquency CasesAuthor(s): Janet E. AinsworthSource: The Future of Children, Vol. 6, No. 3, The Juvenile Court (Winter, 1996), pp. 64-74Published by: Princeton UniversityStable URL: http://www.jstor.org/stable/1602594 .Accessed: 12/01/2011 21:25

Nevertheless, more recent studies of the juvenile court confirm the findings of the earlier ones. Empirical and evaluative research, as well as survey research, indicate[s] that the system today has failed to deliver the procedural justice promised by Gault. For example, in a 1994 survey of 100 juvenile court judges, lawyers, and probation officers, a majority of the interviewed respondents, including nearly half of the juvenile court judges, described judicial conduct that they believed sometimes compromised the abilities of the juvenile defendants [getting] to get a fair trial. This conduct included forcing unprepared parties to proceed with trial or a guilty plea, interrupting the lawyers' witness examinations with their own questions, and cutting off the lawyers' questioning. Two thirds of the surveyed court workers noted that juvenile court judges often had knowledge before trial of the accused juvenile's prior criminal record and of the recommended disposition from the probation officer, and a majority of the respondents thought that this knowledge created a bias in the judge against the juvenile. Despite the requirement that guilt be proven beyond a reasonable doubt, almost half of the respondents maintained that juvenile court judges found juveniles guilty even when the evidence did not meet that standard. More than a third of the surveyed participants felt that juvenile court judges admitted evidence that should have been excluded under the rules of evidence." Many respondents observed that juvenile court hearings were conducted too quickly, that the atmosphere was not serious enough, and that the treatment orientation of juvenile court personnel--including judges, prosecutors, and defense counsel---interfered with the accused juvenile's ability to have a fair trial. Sanbom's study, acknowledging that adult defendants do not always receive mandated procedural justice, nonetheless concluded that the procedural deficiencies of the juvenile court system were worse than those of the adult system.

B. The absence of juries in the juvenile systems uniquely harms defendants.

Ainsworth 2:

Princeton UniversityThe Court's Effectiveness in Protecting the Rights of Juveniles in Delinquency CasesAuthor(s): Janet E. AinsworthSource: The Future of Children, Vol. 6, No. 3, The Juvenile Court (Winter, 1996), pp. 64-74Published by: Princeton UniversityStable URL: http://www.jstor.org/stable/1602594 .Accessed: 12/01/2011 21:25

Denial of the right to trial by jury hurts juveniles accused of crime in several ways. First and foremost, juries acquit more readily than do judges, so juveniles are more likely to be convicted than if they could opt for jury trial." There are a number of reasons juries are more likely to acquit than judges. Judges, particularly in high-volume courts such as juvenile court, hear hundreds, even thousands, of cases a year, compared with the one or two that jurors hear during their service. Having to sit on so many cases, judges may become less careful in weighing the evidence and more cynical in evaluating the credibility of the juveniles who appear before them. This is all the more likely when they know before trial of the juvenile's prior record, have heard the motion to suppress a confession, or have read the probation officer's report on the juvenile's social background. In addition, the parties in a jury trial have an opportunity to exclude jurors whose personal biases may prevent them from fairly trying the case. Jurors undergo voir dire examination, in which the litigants may probe to determine whether any juror's attitudes, experiences, or beliefs might adversely affect the way in which he or she would hear the case. No comparable opportunity exists to inquire into potential bias or prejudice by the judge in a bench trial. Denial of the right to jury trial disadvantages juveniles even after the fact-finding stage. In a jury trial, jurors must [also] be explicitly instructed in the law to be applied in the case by the trial judge through written jury instructions. Any error of law can be later reviewed by an appellate court. However, when a judge sits without a jury, she need not expressly articulate her understanding of the law; therefore, the appellate court has no way of determining whether the juvenile court judge misunderstood or misapplied the law to the juvenile's detriment. Thus, depriving juveniles of jury trial puts them at a double disadvantage compared with adult defendants: they are more likely to be convicted at trial and are less likely to be able to demonstrate an error of law on appeal.

Even if juries are worse than judges, juveniles can waive their right to trial by jury when treated as adults, so there’s no risk of harm AND the state has still provided a check. Additionally, it’s the perception of getting a fair shake from the state that matters, so the actual end of juries being worse would be irrelevant. Further, in the Aff world, juveniles can still plea bargain to avoid going before a jury if they want. While they can plea in the Neg world too, the presence of a jury gives juveniles a democratizing way to procedurally check overzealous prosecutors who want to exploit them with a bad deal.

C. The judicial justice system lacks probable cause hearing.

Drizin writes:

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Despite the benefits and the procedural safeguards of a probable cause requirement, most states do not require a probable cause hearing outside of a decision to transfer a juvenile to adult court, or as a means for holding juveniles in detention. Writing in 1984, Professor Feld commented on Minnesota's failure to mandate a probable cause hearing for non-detained or non- transferred [\*301] youth. 353 The majority of states follow a similar procedure to that of Minnesota, requiring only that the juvenile court maintain jurisdiction over the child, meaning the production of a vague document stating that the child has committed an act that makes him subject to juvenile court jurisdiction. 354 Even in states that require the state to lay out the factual basis for the charges against the child, those jurisdictions do not require the same level of detail as in a criminal complaint or indictment. 355 Moreover, juveniles do not have a right to a grand jury proceeding. While New York's Chief Judge Sol Wachtler once said that "[e]ven a modestly competent district attorney can get a grand jury to indict a ham sandwich", 356 courts do not even afford juveniles this modicum of probable cause protection. 357 While the Supreme Court has not held that a non-detained youth has a constitutional right to a probable cause hearing; 358 such a rule makes procedural sense in terms of accuracy and fairness. 359 While a probable cause screening requirement poses some inconvenience on the State, a lack of such proceeding places a tremendous burden on a child. Without a probable cause screening, a child has to go through the entire delinquency process, all the way through trial, without the state ever having "to justify in writing and submit to judicial scrutiny [\*302] the underlying factual basis for that imposition." Forcing an innocent child to go through an entire delinquency process not only places a financial burden on all, but also provides a perverse incentive for children to plead guilty because it is safer, less expensive, or more expedient. A probable cause requirement may also deter prosecutorial abuses of discretion, 361 a recurring problem in most wrongful conviction cases.

D. Denying juvenile due process rights increases recidivism.

Segadelli writes:

Minding the Gap: Extending Adult Jury Trial Rights to Adolescents While Maintaining a Childhood Commitment to Rehabilitation Jennifer M. Segadelli

Jury trials may serve to legitimize the proceeding in the eyes of the adolescent; without them, the adolescent likely feels he or she was not afforded the same rights that others similarly situated were, and treatment was therefore unfair. This concept of “procedural fairness” plays a critical role in understanding why people obey the law, the cognitive and emotional development of adolescents to obey the law, and the rates of adolescent recidivism, discussed in greater detail below. At the same time, participation in the legal process, the very foundation upon which jury trials were constructed, empowers adolescents to take an element of responsibility and involvement in their ultimate fate—an aspect painfully missing from the current juvenile system. The perceptions of fairness, impartiality, and involvement that adolescents are likely to feel in a jury trial proceeding will only serve to heighten rehabilitation and accountability for their wrong act. To deny any criminal defendant, regardless of his or her age, the right to a jury trial is truly a denial of a fundamental constitutional right. Courts and commentators have cited numerous reasons for concern in denying juveniles the right to a jury trial, but what is being masked by their concern is an overall feeling of inefficiency. Courts are looking to take the “easy way out.”138 Jury trials are long and often inefficient procedures, but they are of such critical importance that the juvenile system should not be “protected” from their shortcomings. The right to a jury trial is of even greater importance in the juvenile arena because of the courts’ and society’s inability to relate to its youth, particularly its adolescent offenders. Clearly, it is not unprecedented to extend the right to a jury trial to juvenile offenders, and it would not even be far from the scope of other constitutional rights now active in the juvenile justice system. But that is not to say that it would be without its difficulties and issues, the most salient of which will likely be: who makes up the jury? As we will explore later in the article, this may not be as big of a hurdle as once believed. The progressive attitude that conceived of the juvenile court system did so because of the unique aspect and position of juveniles in this society. Juveniles, for better or worse, are in an extremely different position than adults, in both maturity (physical, cognitive, and emotional) and in the capacity to learn, grow, and change—a capacity that, we as adults know, becomes increasingly difficult with age. The issue is not whether to eliminate the juvenile court system altogether—to do so would be foolish and treat minors, who are deservedly distinguishable from adults, with exact similarity. This section examines the psychology behind why people obey the law, the important distinction between children and adults, the danger of losing the adolescent in a dichotomous system, and why methods of rehabilitation remain crucial for teens. Procedural justice theory is the notion that people are more likely to obey the law and comply with generally accepted social policy if they believe that the procedures utilized by the justice system are fair, unbiased, and efficient.139 This theory is relevant to a juvenile’s right to a jury trial because, if the juvenile feels that the process with which he was sentenced was unfair, he may be less likely to respect the law, leading to higher recidivism rates. Several empirical studies, conducted by Tom Tyler and others, suggest that people obey the law when the rules and procedures are consistent with their personal attitudes and values.140 That is, when people are personally committed to obeying the law, they voluntarily assume the obligation to do so, irrespective of the risk of punishment.141 People care enormously about process and greatly value the opportunity to be heard in an official and unofficial capacity, regardless of the outcome of that fact finding.142 Tyler’s research further suggests that the behavior of and processes used by police officers and judges—if perceived by the alleged offender to be fair, unbiased, and benevolent—can encourage voluntary acceptance of and compliance with decisions made by legal authorities.143 Such voluntary acceptance of the rules and norms of society can thus lead to lower rates of reoffending.144 According to Tyler, “one’s sense of obligation to a certain set of rules is the key element in the concept of legitimacy, as it leads to voluntary deference.”145

E. The juvenile system uses indiscriminate shackling to impose pain and restrict rights.

USA Today writes:

USA Today 2007[[1]](#footnote-1)

At issue is whether kids as young as 10 need to be shackled for court security, and whether putting chains on young defendants not only makes them look like criminals but also makes them more likely to think of themselves in that way. The U.S. Supreme Court has said repeatedly that the sight of shackles on a defendant in a courtroom can unfairly influence a jury. Adult defendants may not appear in court in shackles in front of a jury that decides their fate. In almost all juvenile proceedings, though, a defendant's fate is in the hands of a judge, not a jury. Juvenile court procedures vary among the states and even within counties, so it's unclear precisely how many juvenile courts routinely shackle young defendants. But USA TODAY has found that in 28 states, some juvenile courts routinely keep defendants in restraints during court appearances.

This shackling intends to cause pain to coerce the juvenile.

Perlmutter[[2]](#footnote-2) writes

Shackling a child interferes with the child's fundamental due process right to the "guiding hand of counsel" [n194](http://www.lexisnexis.com.proxy.lib.duke.edu/lnacui2api/frame.do?reloadEntirePage=true&rand=1294385561509&returnToKey=20_T10956995998&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.572521.1417755643" \l "n194) deemed so essential to help the juvenile "cope with problems of law, to make skilled inquiry into the facts, to insist upon regularity of the proceedings, and to ascertain whether he has a defense." [n195](http://www.lexisnexis.com.proxy.lib.duke.edu/lnacui2api/frame.do?reloadEntirePage=true&rand=1294385561509&returnToKey=20_T10956995998&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.572521.1417755643" \l "n195) [\*37]  Just as **shackles "impose physical burdens**, pains, and restraints" on an adult criminal defendant, **"tend to confuse and embarrass"** his **"mental faculties," and**, therefore, "materially . . . abridge and **prejudicially affect** his **constitutional rights,"****[n196](http://www.lexisnexis.com.proxy.lib.duke.edu/lnacui2api/frame.do?reloadEntirePage=true&rand=1294385561509&returnToKey=20_T10956995998&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.572521.1417755643" \l "n196)**in the case of a child facing allegations of delinquency,the prejudicial effects of shackles in the courtroom, in practical, clinical, and constitutional terms, are markedly more severe and debilitating. First, handcuffing a child handicaps the child's ability to communicate with counsel. Putting cuffs on the child's wrists impairs the child's motor coordination, making it difficult to write messages to counsel while the hearing is in progress, if talking to the defense lawyer is impractical. Second, research on the problems manifested by children in the juvenile justice system reveals that most "are affected by trauma, at least half are struggling with learning disabilities, and all are limited by their childish thinking." [n197](http://www.lexisnexis.com.proxy.lib.duke.edu/lnacui2api/frame.do?reloadEntirePage=true&rand=1294385561509&returnToKey=20_T10956995998&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.572521.1417755643" \l "n197) Because these conditions are already known to impair their ability to assist counsel, chaining a child in the courtroom may even further hamper the child's ability to communicate and interact with counsel due not only to physical handicaps or discomforts associated with cuffs or shackles, but to psychological effects. Like adults, but even more so, shackled children are likely to be confused or embarrassed by their restraints. [n198](http://www.lexisnexis.com.proxy.lib.duke.edu/lnacui2api/frame.do?reloadEntirePage=true&rand=1294385561509&returnToKey=20_T10956995998&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.572521.1417755643" \l "n198) Third, **beyond impairing the child's physical ability to communicate** and causing the child to have a lowered self-image, **shackling may exact a coercive effect on the child's ability to freely** and voluntarily **decide whether to** engage in **plea-bargain**ing **or to proceed to trial. The restraints** may in fact **coerce the child to believe** that **he must waive rights to counsel**, to trial, **or to plea bargain** in order **to have the shackles removed.**[n199](http://www.lexisnexis.com.proxy.lib.duke.edu/lnacui2api/frame.do?reloadEntirePage=true&rand=1294385561509&returnToKey=20_T10956995998&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.572521.1417755643" \l "n199) Thus, the impairment of a child's physical movement and mental faculties, psychological harm, and interference with the child's ability to assist counsel caused by shackling, constitute significant burdens to the child's constitutionally guaranteed right to be guided by counsel during a hearing.

Presumption and permissibility go Aff because we always default to treating people as moral equals absent a good reason not to. Additionally, they go Aff because of the Neg time skew. Even if there are substantive reasons they go Neg, the disadvantage of Affirming denies the fairness of that substantive interpretation and requires they Affirm. Finally, absence of good reason to Negate generates an obligation to Affirm because there are harms inherent in the status quo that we cannot be complicit with and are thus obligated to make an attempt to decrease.

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1. [“Should kids go to court in chains” http://www.usatoday.com/news/nation/2007-06-17-shackles\_N.htm] [↑](#footnote-ref-1)
2. SYMPOSIUM ISSUE: IN RE GAULT: ARTICLE: "UNCHAIN THE CHILDREN": GAULT, THERAPEUTIC JURISPRUDENCE, AND SHACKLING NAME: Bernard P. Perlmutter \*  
    [↑](#footnote-ref-2)